

TITLE 28

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 1-92

DATE APPROVED: February 20, 1992

SUBJECT: TO ESTABLISH A UNIFORM PROCEDURE FOR COLLECTING DEBTS
OWED TO THE TRIBE AND TRIBAL ENTITIES

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (c) of this Constitution and Bylaws authorized the Hoopa Valley Business Council, "To collect and expend any Hoopa Valley Tribal funds...", and

WHEREAS: The Tribe has various Tribal entities that are designed to render services to members and non-members, some of which required the issuance of credit for services rendered, and

WHEREAS: The Tribal Council has determined that it would best serve the Tribal interest to develop a fair and uniform procedure for collecting outstanding delinquent debts owed to the Tribe and Tribal entities, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Tribal Council does hereby enact this Tribal Debt Collection Ordinance as Title 28 of the Tribal Code and said Ordinance shall be in full force and effect.

28.0 SHORT TITLE

The short title of this Ordinance shall be the Tribal Debt Collection Ordinance of the Hoopa Valley Tribe.

28.1 PURPOSE

The purpose of this Ordinance is to establish a systematic and uniform process for the collection of debts owed to the Hoopa Valley Tribe and its subdivisions. This Ordinance is not intended nor shall be construed as authorization for the issuance of credit to anyone, including organizations, entities or individuals. The collection of debts resulting from such issuance of credit shall be the responsibility of the issuing official of the Tribe, or

his/her successor.

28.2 DEFINITIONS

28.2.1 "Debt" means any debt owed to the Hoopa Valley Tribe or any Tribal entity which functions under the authority of the Hoopa Tribal Constitution.

28.2.2 "Official" means any person who is responsible for overseeing, administering, supervising or managing the operations and activities from which a debt occurs. In every situation where the Official is not readily identifiable, it shall be the program, department or entity director, whether the person is in interim, temporary, or permanent employment status, or their designated representative.

28.2.3 "Debtor" means any person, organization or other entity (1) as defined by the loan document or Credit Policy as a delinquent borrower; or (2) whose payments are beyond the terms of the loan or credit agreement; or (3) not having a formal loan or credit agreement but who has not made satisfactory payment within a thirty (30) calendar day period from the date which the debt occurred or from the date of the last payment.

28.2.4 "Tribal entity" means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Constitution of the Hoopa Valley Tribe.

28.2.5 "Per Capita" means any distribution of the Tribe or the United States that is distributed to each enrolled member of the Tribe.

28.3 ESTABLISHMENT OF CREDIT POLICY

Prior to issuing credit, each Official of the Tribal entity shall establish a Credit Policy which may include, among other things, a process which is internal to that entity for collecting debts owed to the Tribe. The Credit Policy shall include provisions for late charges and interest and any other assessments that will be charged to the borrower.

28.4 EFFECT OF EXISTING COLLECTION PROCEEDINGS

Any collection proceedings which may be underway on the date of enactment of this Ordinance shall be continued under the provisions of this Ordinance. To the extent the entity has already served on the debtor notice comparable with those contained in 28.8 such notice need not be repeated under 28.8.

28.5 JURISDICTION

28.5.1 Application to Debts

This Ordinance shall apply to any debts owed to the Tribe regardless of the identity of the debtor.

28.5.2 Actions brought in Tribal Court

All lawsuits to collect debts owed to the Tribe shall be brought in Tribal Court unless it is determined by the Tribal Council through resolution that the Tribe's interest would be better served by filing such action in another jurisdiction.

28.5.3 Tribal Entities Empowered to File Actions

Each Tribal entity is empowered to file a collection action in Tribal Court in its own name whether or not its governing document contains such authority.

28.6 RESPONSIBLE PARTIES

28.6.1 Official to Bring Action

The Official shall be responsible as a matter of his/her employment requirements for the collection of any debts and shall take all necessary steps, including but not limited to those prescribed in this Ordinance, to collect such debts and to inform appropriate parties of a judgment.

28.6.2 Responsibility of Entity Managers

Whenever a monetary judgment is rendered by the Tribal Court, each entity manager shall as a matter of his/her responsibility to the Tribe assist in the collection of such judgement. It is the responsibility of each entity manager to assist in the collection of all debts owed to his or her entity and those of other entities.

28.7 TRIBAL ATTORNEY - TECHNICAL ASSISTANCE/REPRESENTATION

Any Official may seek the technical assistance from the Office of Tribal Attorney, or other legal office authorized by the Tribe, in pursuing the collection of any debt. Any Official may request representation by the Office of Tribal Attorney in any matter, including those involving litigation, however, such representation does not diminish the responsibility of the Official in such matter. The Hoopa Valley Development Enterprise shall be assisted and may be represented by its in-house legal counsel.

28.8 NOTIFICATION

When a debtor has not made timely payment on a debt, the following procedure shall be followed except where an entity's Credit Policy provides comparable notice provisions:

28.8.1 First Notice

Within ten (10) working days after a payment becomes due but is not paid, the Official shall by first class mail send the debtor a late payment notice requesting an immediate payment plus any other charges as provided in the credit policy.

28.8.2 Second Notice

Whenever the payment becomes thirty (30) days late, the Official shall by first class mail send the debtor a "Second Notice" late payment notice which shall also state that the debtor must make such immediate payment or collection proceedings will be initiated.

28.8.3 Collection Notice

Whenever a payment becomes sixty (60) days late, the Official shall by first class mail send the debtor a "Collection Notice" that the Official is filing a complaint in Tribal Court for collection. Failure to send the debtor a Collection Notice shall not constitute a defense that would prevent an action from being brought for collection of any debt.

28.9 ASSESSMENT OF DAMAGES INCURRED

Whenever a debt becomes thirty (30) or more days delinquent the Official may assess charges, in addition to the outstanding balance of the debt for damages incurred. Such damages may include, but are not be limited to, the loss of interest income, additional expenses such as legal and other experts needed during the collection process, and filing fees and other court expenses.

28.10 REAL PROPERTY FORECLOSURES

Foreclosures on deeds of trust and mortgages shall be in accordance with California law which is adopted herein as a matter of Tribal law.

28.11 PER CAPITA PAYMENTS

28.11.1 Payments not Liable for Previous Obligations

Per capita payments shall not be liable for any previous

obligations except those to Tribal entities.

28.11.2 Applied to Debts

Per capita payments are authorized to be applied, in part or in full, with or without first obtaining a judgement, toward any debt of any Tribal member to a Tribal entity. It is the responsibility of the Official of the Tribal entity to which the payment, or portion thereof, has been credited to provide the debtor with an acknowledgement of receipt of the funds.

28.11.3 Per Capita Withholding Form

All requests to withhold any per capita payment shall be made by filing a Per Capita Withholding Form with the Tribal Fiscal Department. Such forms shall contain the following provisions:

- a. The name of the Tribal entity and Official directing that a per capita payment be withheld from distribution to the Tribal member.
- b. The name and address of the debtor.
- c. A brief explanation of the nature and amount of the debt.
- d. A statement that the debtor may receive other Per Capita Withholding Forms from other Tribal entities if the debtor has multiple debts with the Tribe.
- e. A explanation of the appeal procedures available to the Tribal member.

28.11.4 Debts Secured By Prior Agreement

28.11.4.1 Secured Prior Agreement

When the Tribal entity has secured a prior agreement with the debtor that authorizes a per capita payment to be withheld to repay such debt, the Official shall file a Per Capita Withholding Form with the Tribal Fiscal Department with a copy being sent to the debtor. The Fiscal Department shall honor the directions contained in the withholding form unless notified by the Official otherwise.

28.11.4.2 Perfected Security Interest

Whenever an individual has pledged his or her per capita payments as security for a debt owed to a Tribal entity,

or has authorized the withholding of such future per capita payments as a method of repayment of such a debt, the Tribe shall, as a matter of Tribal law, have a perfected security interest in such payment.

28.11.4.3 Individual(s) understanding

The entity holding the perfected security interest shall orally inform the individual or individuals that his or her (or their) per capita will be deducted if the individual or individuals are delinquent or defaulted on any loans.

The individual or individuals shall also initial a statement (prepared by the entity) assuring that they understand that per capita will be deducted in the event of delinquency or default

28.11.5 Debts Not Secured By Prior Agreement

For debts where the Tribal entity has not secured a prior agreement from the debtor to withhold per capita payments, an Official shall mail a Per Capita Withholding Form to the individual Tribal member at least thirty (30) days prior to the payment date, informing them that unless they contest the debt owed, their per capita payments will be automatically transferred and credited to their delinquent account of that Tribal entity. Unless the Tribal member contests the debt, or any part thereof, by filing a notice with the Tribal entity not less than fifteen (15) days prior to the issuance date of the payments, the Fiscal Department shall process the withholding action as directed. It is the responsibility of the Official to notify the Fiscal Department of any changes in the request to withhold any payment from distribution to a Tribal member.

28.11.6 Appeal by the Debtor

If the matter cannot be first resolved between the debtor and Tribal entity, the following appeal procedures shall apply:

28.11.6.1 Without Prior Security Agreement

The debtor shall have the opportunity for appealing the claims contained in the Per Capita Withholding Form by filing an appeal with the Official. If the matter is not resolved between the Official and debtor, notwithstanding the opinion of the Official, it is the responsibility of the Official to file a complaint in Tribal Court to resolve any disputed matters. Filing an appeal with the Tribal Court shall constitute a stay of any distribution of the

payment, or any portion thereof, by the Fiscal Department to either the Tribal entity or the debtor until the Court has issued a decision. The Official is responsible for informing the Fiscal Department of any appeals being filed.

28.11.6.2 With Prior Security Agreement

In cases where a prior security agreement has been obtained by the Tribal entity for the debt, the Fiscal Department shall distribute the payment as provided in the Per Capita Withholding Form(s). The debtor may appeal such withholding by bringing a separate action in Tribal Court against the Tribal entity for any alleged wrongful withholding of the payment or portion thereof.

28.11.7 Payment Proportional Distribution

In cases where the total of multiple debts exceeds the amount of the per capita payment the Tribal Fiscal Department shall distribute the p[ayment on a proportional basis to each Tribal entity to which a debt is owed. However, no distribution shall be made to a Tribal enetity that does not possess a prior agreement granting a security interest in or authorizing withholding of furture per capitass until the debts owed to Tribal entities having such agreements have been satisfied. When the percapita of a debtor is to be devided between two or more Tribal entities, the portion to which each entity is entitled shall be calculated by mulitplying the dedtor's total per capita by a fraction, the numerator of which is the debt owed to that Tribal entity and the denominator of which is the total of all debts owed by the debtor to all Tribal entities entitled to a portion of the per capita.

28.11.8 Frivolous Claims

The Tribal Court may assess reasonable costs and expenses against the debtor or Official for frivolous claims, including but not limited to court costs, administrative costs and expenses, and other costs that have been incurred by either party that are a direct result of the claims made in such action.

28.12 SATISFACTION OF JUDGMENTS

Upon issuance of a judgment, the Official may apply the following in the satisfaction of such judgment:

28.12.1 Garnishment of Earnings

A judgment creditor may apply to the Tribal court for an order

for the garnishment of earnings and other payments due the judgment debtor from the Tribe. The Tribal court may order garnishment of earnings in an amount that does not exceed the amount allowed by federal law, 15 U.S.C., Section 1673. For the purposes of this section, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, contractual payment, or otherwise, and includes periodic payments pursuant to a pension or retirement program. For purposes of this section, "other payments" includes Council and committee honorariums.

28.12.2 Examination of Judgement Debtor

Once a judgment has been rendered, any Official may file with the Tribal Court a motion to examine financial and asset records of the judgement debtor to determine those available that could be used to satisfy the judgment. The rules for examining the records shall be those contained in the Tribal Code.

28.12.3 Seizure and Sale of Personal Assets

The Tribal Court may authorize the seizure and sale of a judgement debtor's personal assets located within the boundaries of the Hoopa Reservation with the proceeds to be used to satisfy the judgement after deduction for the cost of the seizure and sale. The Judge may order that particular personal assets or classes of assets be exempt from seizure and sale. In determining such exemptions, the Court may, in its discretion, be guided by the exemptions provided in Federal bankruptcy laws.

28.13 RECORDS OF JUDGMENTS

Whenever a judgment is rendered in favor of the Tribe the Official shall notify the following:

28.13.1 County Recorder's Office

The Humboldt County Recorder's Office of a lien on real property when fee property is involved; and

28.13.2 Bureau of Indian Affairs

The Bureau of Indian Affairs and appropriate Tribal entity when trust property is involved.

28.13.3 Tribal Entity

Any Tribal entity after a request has been made for such information.

28.14 REPORTS OF BAD DEBTS

Each Tribal entity shall maintain a current list of those individuals having outstanding and delinquent debts. The specific names and credit information of individual debtors shall be made available to other Tribal entities upon request.

28.15 FOREIGN JUDGMENTS

Any Tribal entity that has received a judgement from another court may file a request to the Tribal Court to honor a foreign judgement and make such judgement enforceable under Tribal law.

28.16 SOVEREIGN IMMUNITY

28.16.2. Sovereign Immunity of the Tribe

Except as provided in 28.16.2, nothing in this Ordinance is intended nor shall be construed as waiving the sovereign immunity from suit of the Tribe, any Tribal entity or any Official while in the performance of his/her official duties.

28.16.2. Counterclaims

When the Tribe or a Tribal entity files a lawsuit pursuant to this Ordinance to collect a debt, the defendant may assert any counterclaim that arises from the same transaction as the alleged debt. The amount sought in the counterclaim may not exceed the amount sought by the plaintiff. Any recovery on the counterclaim may operate only as a setoff against plaintiff's claim. Under no circumstances may a counterclaim result in a money judgement against the Tribe or a Tribal entity.

28.17 Severability

If any part of this Ordinance is held to be invalid the remainder shall continued to be in full force and effect to the maximum extent possible.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 5 were present constituting a quorum at a regular (special) meeting thereof; duly and regularly called, noticed, and convened, and held this 20th day of February, 1992; and that this Ordinance was duly adopted by a vote of 5 for and 0 against, and that said resolution has not been rescinded or amended in any way.

DATED THIS 20TH DAY OF February, 1992

DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:

CHRISTINA PHILLIPS, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL